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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,150	09/25/2001	Hugh Barrass	062891.0525	1755
7590	12/09/2005		EXAMINER	
Baker Botts L.L.P. Suite 600 2001 Ross Avenue Dallas, TX 75201-2980			CHANG, EDITH M	
			ART UNIT	PAPER NUMBER
			2637	

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/964,150	BARRASS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Edith M. Chang	2637	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
- (b)  They raise the issue of new matter (see NOTE below);
- (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

- 4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
- 5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
- 6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-14 and 22.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

- 8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
- 9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
- 10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

- 11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
- 12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
- 13.  Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: Response to Arguments/Remarks  
Applicant's arguments filed on November 21, 2005 have been fully considered but they are not persuasive.

Regarding to claim 1:

Argument: Applicants argue that Rubinstain teaches ADSL system in the background section and is a separate system from the VDSL system discussed.

Response: The specification's background of the invention describes information as being known or conventional, which may be considered as an admission of prior art.

In Rubinstain's background of the invention section describes the system of DSL (ADSL) subscriber line having the downstream capacity to handle the most complex data transfers, such as full motion video, as well as upstream capacity of at least 500 Kbps (column 2, lines 63-column 3 line 1 '368). However, due to the limitation of bandwidth capacity and expensive equipments, it has its drawbacks/disadvantages (column 3, lines 1-5 '368).

However, the fiber to the neighborhood (FTTN) encompasses fiber to the curb (FTTC) with short drops and fiber to the basement (FTTB) serving tall buildings (column 3, lines 27-35 '368) as disclosed in FIG.1. One of the enabling technologies for FTTN is very high rate digital subscriber line (VDSL). The system transmits high speed data over short reaches of twisted pair copper telephone lines, with a range of speeds depending upon actual line length (column 3, lines 35-40 '368).

Hence, Rubinstain discloses a system/facility over different digital subscriber lines over different bandwidths/PSDs (FIG.1 & FIG.2, Abstract).

Argument: Applicants argue that in one non-limiting embodiment of claim 1, the switch recited is operable to communicate to a first and second CPE at a first and second PSD, to account for varying physical capabilities of transmission lines in existing systems (page 8, lines 20-25, Current Application) that Rubinstain does not teach different PSDs.

Response: The claim 1 recites, "the data switch is operable to communicate with the one or more CPE using a first predetermined power spectral density (PSD); and communicated with the one or more CPE using a second predetermined PSD". Rubinstain discloses two different amounts power per unit of frequency (PSD) in FIG.1 or FIG.2 that the switch 18 is operable to communicate with the one or more CPE using a first PSD (on POST); and communicated with the one or more CPE using a second predetermined PSD on (10BaseS) AS RECITED IN THE CLAIM.

The limitations described in the specification will not be read in the claims, if the limitations are not recited in the claims.

Argument: Applicants argue that according to one particular non-limiting embodiment of claim 1, a data switch is operable to support use of a first and second PSD in a network, including ones not supported by public standards, thus permitting communication with "a higher bit rate or greater reliability than PSDs that comply with ANSI or ETSI standards." The Rubinstain system, however, was designed specifically to comply with public standards.

Response: The limitation of "a data switch is operable to support use of a first and second PSD in a network, including ones not supported by public standards, thus permitting communication with a higher bit rate or greater reliability than PSDs that comply with ANSI or ETSI standards" does not recited in the claim 1.

Besides, Rubinstain discloses the "a higher bit rate or greater reliability than PSDs that comply with ANSI or ETSI standards" stated in column 3, lines 35-40, wherein the VDSL is an emerging standard that is currently undergoing discussion in ANSI and ETSI committees, therefore, at the time of Rubinstain's invention, Rubinstain discloses "a higher bit rate or greater reliability than PSDs that comply with ANSI or ETSI standards".

*M. Tran*  
Khai Tran  
PRIMARY EXAMINER 12/07/05